

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

LIBERTAS CLASSICAL ASSOCIATION,
Plaintiff,

v.

Case No. 1:20-cv-997
Hon. Paul L. Maloney

GRETCHEN WHITMER, et al.
Defendants.

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MOTION TO FILE FIRST AMENDED VERIFIED COMPLAINT AS A MATTER OF COURSE

Plaintiffs moves this Court for to file the attached First Amended Verified Complaint under Federal Rule of Civil Procedure 15(a)(1)(B). Original Defendant, deputy director Mansaray is the only party to have file a responsive pleading (answer and counterclaims). She has dismissed her counterclaim and is being dropped from the amended complaint and replaced with the top official

from the Ottawa County Department of Public Health, Lisa Stefanovsky. Counsel for the County has consented to Mansaray's dismissal.

Moreover, the remaining defendants have filed motions to dismiss only, and not responsive pleadings, so there will be no unfair prejudice to them for a modest delay. This Motion was brought 30 days after remaining defendants filed motions to dismiss on November 17, however, this Motion to Amend is still timely because the timing to amend as a matter of course was arguably tolled while the case was on appeal to the Sixth Circuit. The Sixth Circuit relinquished jurisdiction and dismissed the appeal (on voluntary motion by the Libertas) on November 30, which would mean this Motion as filed within 21 days of service of a 12(b)(6) motion.

In the alternative, this Court should permit the amendment under Fed. R. Civ. P. 15(a)(2) because justice requires it. The amended verified complaint adds important information because the Defendants issued five or more orders (affecting schools statewide) and six more orders (affecting Libertas within Ottawa County) since Libertas originally sued. This amendment is also necessary to prevent the repetition of constitutional harm but evasion of review. The first amended verified complaint is attached as **Exhibit A** and has its own **Exhibits 1-5**.

Dated: December 17, 2020

Respectfully Submitted,

/s/ Ian A. Norton

Ian A. Norton